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Supreme Court of the United States

OCTOBER TERM, 1978

No. [REDACTED]

BEECH AIRCRAFT CORPORATION,

Petitioner,

vs.

GALE BRABAND and ELIZABETH FORSYTHE,

Respondents.

**RESPONSE OF RESPONDENTS GALE BRABAND
AND ELIZABETH FORSYTHE TO THE
PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF ILLINOIS**

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TABLE OF CONTENTS

	PAGE
Statement of the Case	1
Sale of the Aircraft	2
Complaint	3
Nature of the Franchise Agreement	3
Activities of Beech in Illinois	5
Opinion of the Illinois Supreme Court	7
Reasons Why a Writ of Certiorari Should Not Be Granted	8
Conclusion	13
Appendix	1a

LIST OF AUTHORITIES CITED

ACS Industries, Inc. v. Keller Industries, Inc., 296 F. Supp. 1160, 1163 (D.C. Conn. 1969)	10
Dunn v. Beech Aircraft Corporation, 276 F. Supp. 91, 92, 93 (E.D. Pa. 1967)	11

IN THE
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OCTOBER TERM, 1978

No. 78-1382

BEECH AIRCRAFT CORPORATION,

Petitioner,

vs.

GALE BRABAND and ELIZABETH FORSYTHE,

Respondents.

**RESPONSE OF RESPONDENTS GALE BRABAND
AND ELIZABETH FORSYTHE TO THE
PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF ILLINOIS**

STATEMENT OF THE CASE

Respondents Gale Braband and Elizabeth Forsythe deem an additional statement of the case to be essential because the statement furnished by Petitioner omits many pertinent facts and fails to provide record citations to support those facts set forth therein. [Citations herein to the record are made to the pages of the Record and the Excerpts filed in the State Court by

the Petitioner.] The opinion filed by the Illinois Supreme Court (App. of Petitioner at 42) did not set out all the facts pertinent to the underlying matter, and Respondents therefore submit the following for the convenience of the court.

Sale of the Aircraft

This action arises out of the crash of an airplane designed and manufactured by Beech Aircraft Corporation (hereinafter Beech). (R. 19, 25; E. 63, 69.) The aircraft in question was manufactured by Beech and sold to Tex-Sun Beechcraft, Inc., in San Antonio, Texas in 1966. (R. 20; E. 64.) Tex-Sun Beechcraft, Inc., sold the aircraft in 1968 to Mission Broadcasting Company, which resold the aircraft in 1971 to Coleman Aircraft Corporation located in Morton Grove, Illinois. (R. 20; E. 64.) Coleman distributes Beech products in Illinois. (R. 62; E. 140.) The aircraft then remained based in Illinois for a period of time prior to the accident. (R. 20; E. 64.) The plane remained the property of Coleman and was owned by either that company or by defendant Eagle Aircraft Services, Ltd., an English corporation, at the time of the accident. (R. 20, 90, 136; E. 4, 23, 64.)

Coleman had a charter or ferry arrangement to fly the aircraft from Illinois to London, England via the airport at Frobisher Bay, Northwest Territories, Canada. (R. 94, 134, 136; E. 2, 4, 27.) The plane was being piloted by James Going, an employee of defendant Eagle, who was accompanied by plaintiffs' decedents James L. Braband and Donald R. Forsythe. (R. 19, 134, 136; E. 2, 4, 63.) The aircraft crashed on Dec. 10, 1971 as it approached the airport at Frobisher Bay, killing James Braband and Donald Forsythe. (R. 19; E. 63.)

Complaint

James Braband left surviving: Gale Braband, his wife; Philip James Braband, his son; Joseph Allen Braband, his son; and Amy Linne Braband, his daughter. Donald Forsythe left surviving: Elizabeth Forsythe, his wife; Patricia Forsythe, his daughter; Michael Forsythe, his son; Susan Forsythe, his daughter; and Timothy Forsythe, his son. (R. 135; E. 3.) Both James Braband and Donald Forsythe were residents of the State of Illinois at the time of their deaths. (R. 135; E. 3.) Each member of the surviving families was and remains a resident of the State of Illinois. (R. 20; E. 64.) Respondents filed a complaint alleging that the aircraft was defective and unsafe. (App. of Petitioner at 2; E. 2.)

Nature of the Franchise Agreement

Beech is a manufacturer of aircraft incorporated in Delaware with its office and principal place of business located in Wichita, Kansas. (R. 21; E. 65.) Beech had written franchise agreements with Hartzog Aviation, Inc., in Rockford, Illinois, whereby Hartzog purchased Beech aircraft in Kansas and resold said aircraft to the public in Illinois. (R. 21, 43; E. 70-88, 121.) These agreements were standard agreements used by Beech to establish a franchise. (R. 39; E. 117.) The rights and duties existing between Beech and Hartzog under the terms of that franchise agreement were summarized in the "Agreed Statement of Facts" as follows (R. 21, 22; E. 65, 66):

Hartzog is required to submit purchase orders for all airplanes ordered by Hartzog under the agreement and all such purchase orders are subject to approval and acceptance by Beechcraft at its principal place of business;

Hartzog is permitted to sell Beechcraft airplanes within a given area of the State of Illinois;

Hartzog is required to devote its full sales efforts to the sales of such aircraft;

Hartzog is required to price the aircraft it sells;

Hartzog is required to maintain sales control records and advertise Beechcraft airplanes exclusively and completely in accord with the directives and policies of Beechcraft;

Hartzog is required to perform all warranty, maintenance and repair service on all Beechcraft airplanes covered by warranty provisions of purchase which aircraft were in Hartzog's area of responsibility during their warranty period and regardless of whether or not they were airplanes sold by Hartzog;

Hartzog agreed to provide any and all facilities at its place of business which were necessary by Beechcraft to distribute and sell Beechcraft products;

Hartzog could not move its place of business without obtaining the prior written consent of Beech. In addition, Beechcraft through its officers and employees could enter Hartzog's sales area to make marketing surveys or gather any other information Beech may desire and to call upon and examine the facilities and/or personnel of Hartzog during business hours and to do anything else which Beech believed necessary and proper for increased sales;

Beech could inspect the complete operation of Hartzog from time to time including the business facilities, records, supplies and personnel;

Beechcraft trademark was allowed to be used by Hartzog;

Under certain conditions, Beechcraft could terminate the sales agreement without any advance notice.

Activities of Beech in Illinois

During the last five years, the Beechcraft logo or corporate symbol has been displayed, under the terms of said franchise agreements, in the Chicago metropolitan area telephone directories to advertise the locations where Beechcraft products and parts could be purchased from Beechcraft franchisees. Said advertisements direct the party interested in Beech aircraft sales or service to contact Hartzog Aviation. (R. 146-154; E. 95-106.) Beechcraft also places advertising signs and logos at the sales agencies. (R. 61; E. 139.)

Beech maintains a position of marketing manager whose duties are to promote and sell Beech aircraft throughout the country. (R. 35, 50; E. 113, 128.) Market research is conducted by Beech. (R. 49; E. 127.) The manager promotes Beech aircraft aviation centers and works with an aviation center in cooperation with the salesmen located there in order to promote the sale of the plane to the individual. (R. 36, 41; E. 114, 119.) Beechcraft products are distributed through various distribution outlets located in each of the states where Beech aircraft are marketed. (R. 40; E. 118.) Beech promoted the sale of Beech aircraft and products through these aviation centers. (R. 42; E. 120.) Hartzog Aviation was such an aviation center. (R. 44; E. 122.)

Aviation centers are visited from time to time by Beech employees who observe the condition of the aircraft and the facilities. Beech performs these inspections in order to maintain the standards of appearance at

each franchise, thus protecting the Beech reputation. (R. 50; E. 128.)

A representative of Beech traveled to Hartzog Aviation in 1973 for the purpose of promoting the sale of a Beech aircraft. This representative involved himself in contacting the prospect and promoted the sale to that prospect. (R. 51; E. 129.) In such circumstances, the Beech representative works as a team with the local retail salesman in order to demonstrate the advantages of Beech aircraft to the prospective purchaser. (R. 52; E. 130.) The Beech representative actually flies the Beech aircraft in order to allow the purchaser to get the feel of it and then accompanies the customer who is allowed to pilot the plane. One such representative made twelve trips to the Hartzog aviation center during a nine-year period of time. (R. 52; E. 130.)

Factory tours are also given by Beech to sales prospects who are brought in by aviation center salesmen. Mr. Hartzog had taken prospects on such a tour. (R. 63; E. 141.)

When Beech introduces a new model of an aircraft, which occurs approximately every two years, the aviation center personnel and salesmen are gathered together in Wichita, Kansas at an annual sales meeting. The new model is then promoted at each of the aviation centers. The aviation center either requests a demonstrator or Beech initiates a trip to the franchisee. (R. 54; E. 132.) Beech regional managers are responsible for coordinating the efforts of the various aviation centers, thus carrying out the directives of the policy manual. (R. 55, E. 133.) Beech also sponsors incentives to individual aviation center salesmen as an award for specific sales results in the field. (R. 55, 60; E. 133, 138.) Inadequate performance by aviation center sales personnel results

in a visit to the center by a Beech representative who discusses the matter with the center manager. (R. 59; E. 137.) Marketing managers and assistant managers program trips to the aviation centers on a repetitive basis throughout the year in order to retain interest in a particular line. These personnel sit and talk to salesmen to help promote sales efforts. (R. 56; E. 134.)

Within a two-year-period prior to December of 1973, Beech conducted "An Evening with Beechcraft" at Hartzog Aviation at which time four Beech representatives met with various sales prospects in the Hartzog area and conducted a sales promotion consisting of slides, films and dinner. (R. 57; E. 135.) Approximately sixty persons attended that function whose purpose was to interest persons in Beech aircraft. (R. 58; E. 136.)

The "Agreed Statement of Facts" also recites that Beech during the past 10 years appeared generally without contesting jurisdiction in 26 actions filed in Illinois courts arising out of 12 aircraft accidents occurring outside the State of Illinois. (R. 140-144; E. 89.)

Opinion Of The Illinois Supreme Court

In the Supreme Court of Illinois, Respondents argued that Beech was amenable to service of process in Illinois because it had committed a tortious act in Illinois, i.e., sold a defective aircraft which Beech knew or should have known would be utilized in Illinois, and because it was present and doing business in Illinois, i.e., solicited business in Illinois on a regular basis and operated a captive subsidiary (Hartzog Aviation, Inc.) in Illinois. The Supreme Court of Illinois affirmed the trial court and the Appellate Court of Illinois for the First District and found Beech amenable to service of process in

Illinois under Ill. Rev. Stat. ch. 110A, §§ 13.3, 16. (App. of Respondents at 1a.) The court specifically stated that said finding was based upon the combination of the actions of Beech in Illinois and the actions of its subsidiary (Hartzog) in Illinois. (App. of Petitioner at 52.) The court further noted that it was not determining whether the activities of the Beech subsidiary standing alone would serve as a jurisdictional basis. (App. of Petitioner at 52.)

REASONS WHY A WRIT OF CERTIORARI SHOULD NOT BE GRANTED

A writ of certiorari should not be granted in the instant case because the opinion of the Illinois Supreme Court herein does not conflict with the decisions of this Court and does not expand existing jurisdictional case law. The jurisdiction of the Illinois courts over Beech is based upon the unique franchise arrangement existing between Beech and its Illinois agent, Hartzog Aviation, Inc., and upon the extensive activities of Beech personnel in Illinois. Thus this case would not readily serve as a vehicle for clarification of jurisdictional standards by this Court.

Contrary to the argument of Petitioner, the finding that Beech was subject to the jurisdiction of the Illinois courts is not premised solely on the fact that a corporation in Illinois (Hartzog) was a subsidiary of Beech. (App. of Petitioner at 52.) Therefore the case of *Cannon Mfg. Co. v. Cudahy Packing Co.*, 267 U.S. 333, 335, 45 S.Ct. 250, 251 (1925) is entirely inapposite.

The holding of *Cannon* is limited to the proposition that the use of a subsidiary does not necessarily subject the parent corporation to the jurisdiction of the state wherein the subsidiary is located. *Cannon Mfg. Co. v. Cudahy Packing Co.*, *supra*, at 338. The Illinois Supreme Court clearly removed the instant matter from the scope of *Cannon* by explicitly stating that it was not determining whether the subsidiary's activities standing alone would subject the parent corporation to Illinois jurisdiction.

Even if the vitality of *Cannon* were at issue, the facts in the instant case establish the existence of substantial and frequent contacts sufficient to establish that Beech was present and doing business in Illinois both through its controlled subsidiary and its own employees. The contacts are set out in detail in the Statement of the Case, *supra* at 3 and are here summarized for the convenience of the Court.

Hartzog is a franchisee of the Petitioner and, as such, Beech controlled Hartzog's business activities pursuant to the terms of a franchise agreement. The rights and duties existing between Beech and Hartzog under the terms of that franchise agreement were summarized in the "Agreed Statement of Facts" (R. 21, 22; E. 65, 66) and are contained herein in the Statement of the Case, *supra* at 3, 4.

Beech aviation centers, including Hartzog, are inspected by Beech employees who observe the condition of both the aircraft and the facilities in order to maintain standards in accord with Beech's reputation. (R. 50; E. 128.) Beech employees work with Hartzog employees as a team in order to demonstrate aircraft to prospective purchasers. (R. 52; E. 130.) Hartzog employees are brought to Wichita by Beech in order to

familiarize them with new models of aircraft. (R. 54; E. 132.) The efforts of the franchisee aviation centers are coordinated by a Beech manager. (R. 55; E. 133.) Inadequate performance by Hartzog salesmen results in a visit from a Beech representative. (R. 59; E. 137.)

Under such circumstances, the courts have consistently held that the nature of the relationship between subsidiary and parent corporation may subject the parent to the jurisdiction of the State in which the subsidiary does business.

Beech's extraordinary control over its franchisees is reflected in the many decisions sustaining jurisdiction over it as a result of its distribution system. For example, the court in *ACS Industries, Inc. v. Keller Industries, Inc.*, 296 F. Supp. 1160, 1163 (D.C. Conn., 1969), upheld Connecticut's jurisdiction over a foreign corporation by virtue of a subsidiary's activities in Connecticut, stating:

In fact, it may be that only Beech Aircraft Corporation has exercised the requisite degree of control over its subsidiaries to have been subjected to jurisdiction in such situations. The Beech trilogy includes *Szantay v. Beech Aircraft Corp.*, 237 F. Supp. 393 (E.D.S.C.), *aff'd*, 349 F. 2d 60 (4 Cir., 1965); *Scalise v. Beech Aircraft Corp.*, 276 F. Supp. 91 (E.D. Pa., 1967). Beech's relationship with its distributor was shown by analysis of their intercorporate contracts and memoranda, and by depositions. Its agreement provided that the distributor's staff and service must be *acceptable to Beech*, inventory would be *prescribed by Beech*, parts would be *supplied by Beech*, and facilities would be provided as *deemed necessary by Beech*. Beech provided pricing guidelines, established minimum quotas, supplied all advertising, limited territory, regulated accounting procedures and controlled

warranties, servicing and other aspects of sales. The distributor was pledged to do whatever 'Beech may consider essential to the development of [its] territory.' *Szantay, supra*, at 399-400.

The basis for assertion of jurisdiction over Beech in this matter is clearly supported in *Dunn v. Beech Aircraft Corporation*, 276 F. Supp. 91, 92, 93 (E.D. Pa. 1967), where the issue was thus stated:

Of course, service in Pennsylvania on Beech Corporation is not valid unless Beech's relationship to AAS presents an adequate basis for the assertion of this Court of in personam jurisdiction over Beech. An agency relationship would be an adequate jurisdictional basis. Thus the question specifically presented is whether Beech controls or could control AAS to the extent that AAS may properly be considered Beech's agent.

Plaintiff's decedent there died in the crash of a private Beech aircraft in Virginia and plaintiff brought suit as a Pennsylvania resident. The court considered deposition evidence and found that Beech was present and doing business in Pennsylvania by virtue of its franchise arrangement with a Pennsylvania distributor. The court there stated and held at 93:

The distributorship agreement between Beech and Atlantic Philadelphia (and thus AAS) indicates that Beech was capable by virtue of the contract of exercising substantial control over the local distributor-dealer corporations. We single out but a few of the relevant provisions: (1) the agreement is terminable by either party upon thirty (30) days' written notice, with or without cause; (2) the distributor must employ personnel acceptable to Beech both in numbers and in quality; (3) servicing of equipment must be acceptable to Beech; (4) the distributor cannot relocate without Beech's consent; (5) the nature and amount of advertising and

promotion are to be determined by Beech; (6) Beech reserves an unlimited right of inspection; (7) the economic structure and accounting system must be satisfactory to Beech.

We are further satisfied that the control provided by the distributorship agreement was in fact exercised. Officers of the Beech Corporation have made frequent visits to Pennsylvania to check on sales programs and to conduct surveys and clinics and to perform other functions of a general supervisory nature.

* * * * *

Comparison with the significant decision in *Delray Beach Aviation Corp. v. Mooney Aircraft Corp.*, 332 F.2d 135 (5th Cir.), *cert. denied*, 379 U.S. 915, 85 S.Ct. 262, 13 L.Ed. 2d 185 (1964), leads clearly to the conclusion that Beech has intentionally entered into competition in the Pennsylvania market and is actively present and 'doing business' in the state.

Review of the cases relied upon by Petitioner in its attempt to create a conflict of decisional law reveals that said cases involve fact situations differing substantially from that before this Court. For example, *DeWalker v. Pueblo International, Inc.*, 569 F.2d 1169 (1st Cir. 1978) dealt only with the issue of whether defendant's principal place of business was other than Puerto Rico for purposes of diversity jurisdiction. The court did not confront the facts found in the instant case, as is evident from the court's statement at 8:

Another case has stated that the parent may be considered amenable to suit where the subsidiary is doing business where "the corporate separation is fictitious, or . . . the parent has held the subsidiary out as its agent, or . . . the parent had exercised an undue degree of control over the subsidiary." *Velandra v. Regie Nationale de Usines Renault*, 336 F.2d 292, 296 (6th Cir. 1964) (citing cases).

Williams v. Canon, Inc., 432 F. Supp. 376, 380 (C. D. Cal. 1977) is a trial court opinion concerning jurisdiction and venue in an antitrust case, wherein the trial court noted that there was no evidence that the defendant controlled or managed the subsidiary corporation. In contrast, the instant case rests upon extensive facts supplied by the complaint, the agreed statement of fact and two amendments thereto, a supplemental affidavit, and an extensive deposition of a Beech marketing manager, all showing continuous, systematic and substantial business activities by Beech in Illinois.

CONCLUSION

The instant matter does not involve a federal question of substance not heretofore determined by this Court nor is the decision of the Illinois Supreme Court in conflict with applicable decisions of this Court. Therefore Respondents Gale Braband and Elizabeth Forsythe respectfully request that the Petition for a Writ of Certiorari be denied.

Respectfully submitted,

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APPENDIX

Ill. Rev. Stat. Ch. 110, § 13.3 (1971):

Service on private corporations. A private corporation may be served (1) by leaving a copy of the process with its registered agent or any officer or agent of said corporation found anywhere in the State; or (2) in any other manner now or hereafter permitted by law. A private corporation may also be notified by publication and mail in like manner and with like effect as individuals.

Ill. Rev. Stat. Ch. 110, § 16(1) (1971):

Personal service of summons may be made upon any party outside the State. If upon a citizen or resident of this State or upon a person who has submitted to the jurisdiction of the courts of this State, it shall have the force and effect of personal service of summons within this State; otherwise it shall have the force and effect of service by publication.
